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August 28, 1997

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Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

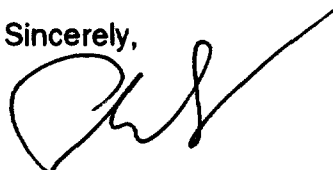
IN RE: RM-9150

Dear Madam or Sir:

Enclosed please find an original and four copies constituting a Formal Comment filing in the above captioned matter before the Commission.

Thank you for your assistance.

Sincerely,



A. M. Amato

AMA/sc

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1 Before The  
2 FEDERAL COMMUNICATIONS COMMISSION  
3 Washington, D.C.

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RM-9150

4 In the Matter of

5 Amendment of Parts 0 and 1 of the Commission's )  
6 Rules to Improve the Procedures for Addressing )  
7 Serious Rule Violations in the Amateur Radio )  
8 Service, and to Create a Private Complaint Procedure )

9 COMMENTS

10 The American Radio Relay League ("League") has proffered a Petition for Rulemaking to the  
11 Commission regarding the Amateur Radio Service, as captioned above.

12 Finding the instant Petition before the Commission compelling in its need, the undersigned  
13 licensees file with the Secretary their comments, to-wit:

14 CURRENT STATE OF MANY PORTIONS  
15 OF THE AMATEUR RADIO SERVICE

16 The Amateur Radio Service ("ARS") has, over the past ten years become a haven for persons  
17 exhibiting utter disregard of the rules promulgated by this Commission.

18 The undersigned has been an active licensee of the ARS since 1985, has noted, as have many  
19 other licensees in print and otherwise, the impunity and bravado of violators - mainly on the HF  
20 bands<sup>1</sup>. It is commonplace for licensees engaging in unlawful practices to comment that "the FCC  
21 can't (or won't) do anything to me."

22 Due to government wide budget constraints official oversight has been limited, and lawful  
23 amateur operators are constantly abused, viz; (i) willful, deliberate, and malicious interference, (ii)  
24 verbal abuse by way of outrageously obscene language together with graphic descriptions of sex acts  
25 between heterosexual and, alternates life style individuals and, (iii) re-broadcasting of commercial

26 <sup>1</sup>The majority of the violators are General Class and above, operating on 75/80 meters and now 160  
27 meters, who have been licensed 5 years or more. In this writers experience, violations by No-Code Techs pale in  
28 comparison to that of higher class licensees operating in the HF bands.

1 programming having *no affinity whatsoever* to amateur radio, among many other serious violations  
2 of Part 97. Such abuse is escalating at an alarming rate, with no sign of abatement..

3 The Commission is regarded by these violators, which are commonplace on the HF bands (to  
4 a much lesser degree on 2 meters), as a nonentity without any inclination or practical ability to  
5 exercise its enforcement powers and, with the violator's standing on the First Amendment as their  
6 authority to violate this Commission's rules. No concern is expressed for minor children or mothers,  
7 who may be listening, having to suffer the obscenities uttered<sup>2</sup>. The once family oriented ARS is now  
8 approaching, on certain bands, the state the Citizens Radio Service reached before its deregulation.

9 However, the average investment by an amateur radio service licensee operating on HF bands  
10 far exceeds any investment a Citizens Radio Service operator (*operating lawfully*) might or could  
11 ever make. The average cost for a HF transceiver is \$1,500.00. Add to this an inexpensive HF  
12 antenna, with the cost a licensee may reasonably expect to pay for an ARS HF capable station being  
13 approximately \$2,000.00. The cost of an average 2 meter station is approximately \$500.00. Many  
14 ARS licensees have investments of more than \$10,000.00.

15 The undersigned is also an Official Observer ("O.O.") under the Memorandum of  
16 Understandings between the Commission and the League. Over the past ten months, the undersigned  
17 has spent more than ninety (90) hours monitoring various portions of the ARS and, issued  
18 approximately fifty Official Observer Notices (see attached "Exhibit 1"). Most of these notices have  
19 gone to the same individuals for repeated language (utterance of profound obscenities by any  
20 reasonable standard) and willful interference violations<sup>34</sup>. Less than a handful have ceased their  
21 proscribed activities. Several have actually doubled their efforts of interference and profanity.

22 Some of the responses to the notices have been threats, most have been met with defiance,  
23

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24 <sup>2</sup>Some of the more inventive violators record their obscene one-way messages, playing them over and  
25 over.

26 <sup>3</sup>In nearly all the violations noted, the persons engaging in the interference admit same and revel in their  
27 actions.

28 <sup>4</sup>There are alternative communications services available to persons desiring to engage in obscene context.

1 with the common thread (expressed in clear language over the air) being a lack of official enforcement  
2 available, that is widely known throughout the ARS, by persons who routinely demonstrate a  
3 proclivity to violate Part 97 of this Commissions' Rules.

4 The instant Petition before the Commission is a remedy that is direly needed. Countless  
5 amateur operators have written editorials in QST, CQ, and '73 magazines noting their disgust in being  
6 subjected to the abuse by other amateur operators who consistently violate Part 97, as a sport. A few  
7 licensees, in their editorials have noted they were closing their stations due to interference and  
8 profanity. The ability to profane and interfere is not a battery in the common law sense - it is  
9 accomplished over the air waves, by persons who remain faceless. These faceless violators, without  
10 official oversight, become bolder and bolder in their abuse - unfortunately, others follow their  
11 practices, compounding the problem.

12 Given the current state of official enforcement priorities, the chances a violator would be  
13 brought before the Commission to answer for their actions, are remote at best. This is *not* a  
14 condemnation of the Commission's enforcement activities; however, it is reflective of budget dollars  
15 versus manpower needs/priorities. There can be little doubt that there are far less Commission Field  
16 Engineer's available to do far more investigations in the ever exploding communications industry.

17 The millions of dollars invested by licensees of the ARS should be protected and nurtured by  
18 the Commission. So should the entrepreneurs who engage in the sales of amateur equipment. A  
19 1995 (most current information available) Readex® Reader Survey<sup>5</sup> commissioned by the League  
20 provided the following insight into the buying habits and operating practices of the amateurs polled,  
21 as well as how much the ARS adds to the U. S. economy, with relevant extracts as follows:

23 Amateur Equipment Purchased through Retail Sources	57.33%
24 Percentage of Respondents who own HF Equipment	85.00%

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26 <sup>5</sup>Surveyed were subscribers of QST Magazine with 149,034 responding (versus well over ARS 600,000  
27 licensees in the Commission data files). Survey error calculated at +/- 3.4% with 95% confidence level.

1	ARS Equipment Owned in excess of \$2,500.00	60.00%
2	Previous 12 month purchases in excess of \$1,000.00	19.00%
3	Previous 12 month purchases in excess of \$2,500.00	17.00%
4	Hours devoted in a typical month (in excess of 10)	54.00%
5	<b>Total Dollars Spent in 1995 by <u>Survey</u> Respondents:</b>	<b><u>\$71,663,836.00</u></b>

6  
7 Based on the 1995 survey, ARS licensees introduced substantially more than One Hundred  
8 Million Dollars into the American economy, employing countless citizens of this country. Both  
9 licensees and entrepreneurs are suffering harm from Part 97 violators currently, with relief being long  
10 overdue.

11 Given the current state of enforcement, it can only follow that ARS licensees will continue  
12 to decline and, amateur radio sales organizations will continue to go out of business, as we have  
13 regrettably seen in the last few years.

14 The inescapable fact, which cannot be overcome by any detractor of RM-9150 is; *why should*  
15 *any reasonable person continue to invest their hard earned money in purchasing amateur radio*  
16 *equipment and not be able to enjoy their license grant because of obscenities and malicious*  
17 *interference?* Moreover, only those who are in violation of Part 97 should be *concerned* with the  
18 instant Petition. The League's Petition affects only those licensees operating outside the rules.

### 19 METHODOLOGY OF SYSTEM PROPOSED

20  
21 The League proposes a viable and cost-effective method to bring willful, deliberate and  
22 malicious interference violators, and the evidence gathered thereof, to a Commission Administrative  
23 Law Judge ("ALJ"). With clear and convincing evidence tendered at the time of submission, which  
24 safeguards the fact-finding procedure by an ALJ, such violations could and should be dealt with  
25 timely versus, the cumbersome and lengthy policy now followed - which is not effectual.

26 Clear and convincing evidence by way of audio tapes with a concurrently recorded control  
27

1 track of the time and date of the violation offer irrefutable evidence of violations. This is the same  
2 procedure used by law enforcement agencies in criminal investigations, been tested and accepted by  
3 the Courts, and should be no less credible for Part 97 violations<sup>6</sup>. Original tapes, with the proper  
4 identification thereon, should be submitted to the ALJ via the appropriate mechanism, with the  
5 Official Observer retaining an unadulterated duplicate. This procedure would provide the necessary  
6 safeguards against abuse as, testing methods have long existed to attest to the validity and integrity  
7 of electromagnetic tape recordings.

### 8 9 FINAL COMMENTS

10  
11 The instant petition, while a fine effort to stem the interference problems plaguing the ARS,  
12 does not go far enough. Onerous and explicit obscenities<sup>7</sup> are as widespread a problem (even more  
13 so) as deliberate interference, and must be dealt with also. It is left to the Commission if the serious  
14 problem of obscenity will be merged with the instant petition. We believe it should. Assuming  
15 *argumendo* the Commission would consider addressing deliberate interference *and* obscenity, we  
16 believe fixing the problem of interference *and* abuse go hand in hand, and would appear to be a more  
17 practical approach to consider both species of violations be submitted to a ALJ.

18 The method offered by the League is well crafted, economically judicious, yet an effective  
19 way to deal with the most compelling abuse encountered by amateur radio operators. It must also  
20 be noted that once a clear and concise pattern of official enforcement is in place and exercised, this  
21 writer reasonably believes the ARS will return to a place any Commission member would not hesitate  
22 to let their child listen to, and operate on the HF Bands. That, most certainly, is not the current state  
23 of amateur radio except for the most jaded of individuals.

24  
25  
26 <sup>6</sup>This procedure has been used by Official Observers for major violations over the past years. In fact,  
many O.O.'s (including this undersigned) routinely tape violations in case the recipient complains to the League.

27 <sup>7</sup>Exclusive of: "hell", "damn", and "crap".

1 In furtherance of educating amateur radio operators in the workings of the Official Observer  
2 program, I have given talks to clubs/groups in and about the metro-Richmond area. At each talk, the  
3 overwhelming response is; "please keep up the good work, its needed." The vast majority of  
4 licensees want enforcement of Part 97 so they can operate lawfully, unmolested and without assault.

5 While I cannot comment on the activities of other Official Observers, I know my personal time  
6 is valuable. The hours I spend monitoring are not used for personal agenda's or moral crusades. I  
7 do not deal with routine, minor and inadvertent violations that are immediately corrected. My efforts  
8 are concentrated on serious violations of Part 97 which impact any ARS licensee's ability to freely  
9 and lawfully communicate. To attempt to deal with more than a modicum of Part 97 violations would  
10 mean any O.O. would have to make monitoring a full time job. The O.O. program, made up of  
11 volunteers, is a program that costs the taxpayer nothing; it was conceived as an extension of the "old"  
12 philosophy of "amateur self regulation." It is a sad commentary that the program is effective in  
13 dealing with only ARS licensees who are genuinely interested in operating lawfully, and are unaware  
14 or who immediately recognize their violation. The aberrant behavior manifested by a small but  
15 growing percentage of the whole licensee base cannot be dealt with under the current enforcement  
16 practices, put into place when an FCC Field Engineer's Citation meant something.

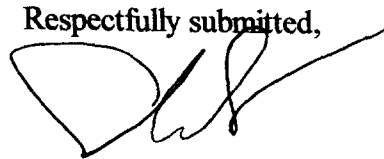
17 Official Observers, far from being "radio police," under RM-9150 the Commission retains full  
18 jurisdiction of establishing probable cause that a violation occurred, and enforcement thereof - not  
19 the Official Observer. The Official Observer acts only as a facilitator and evidence gatherer. Nothing  
20 more that O.O.'s *do now*.

21 The consequences of a continued lack of official attention and enforcement can only further  
22 erode a radio service that has given, and can continue to give, so much to the American public in  
23 technology, public service, and provides unparalleled emergency communications in time of natural  
24 and man-made disaster<sup>8</sup> that government has, and continues to depends on<sup>9</sup>.

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25  
26 <sup>8</sup>During a recent Hurricane that affected Virginia, the Virginia Emergency Operations Center brought-up  
27 its statewide HF Emergency Net [on 80 meters] after the Governor of Virginia declared a State of Emergency.  
28 Amateur radio operators who held their Net of an informal character, not dealing with any emergency traffic,

1  
2 Respectfully submitted,  
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21 objected to the Virginia Department of Emergency Services using "their" frequency. The frequency was made  
22 unusable by the objecting amateur radio operators, with the Virginia EOC Net caused to move from the obstructed  
23 frequency. This is a prime example of why RM-9150 has been offered and should be dealt with expeditiously.

24 <sup>9</sup>On August 28, 1997, the Federal Emergency Management Agency, Atomic Energy Commission,  
25 Virginia Department of Emergency Services and 28 other local and state agencies held their every other year  
26 mandated drill surrounding the Surry Nuclear Power Plant in Surry, Virginia. RACES was activated by the  
27 Commonwealth of Virginia in this wide area drill, to test primary and secondary communications if there was an  
28 accident at the Surry facility. RACES operators were deliberately interfered with for two hours on the primary  
repeater established for amateur communications for this drill, hampering the passing of traffic from the Virginia  
Department of Emergency Services to the Surry area. Almost 100 amateurs (who had taken the day off to  
participate) in 14 jurisdictions were interfered with.



We, the undersigned, support the comments attached hereto in pages 1 through 7 inclusive:  
NAME OF LICENSEE CALL SIGN SIGNATURE

Asbury C McNeely	K4YEF	A.C. McNeely
Robert J. Turner	K745T	Robert J. Turner
Edward H. Vaughan	KN4CF	Edward H. Vaughan
Danny O'Sheehan	KR4NL	Danny O'Sheehan
William M. Erwin	KD4SUU	William M. Erwin
J.E. Wagner	N4XBP	J.E. Wagner
James Wells	KD4RK	James Wells
	K4DWS	